IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 407 OF 2003

Sabhajit S. Singh, Hindu, Aged 48 years, Indian Inhabitant of Mumbai, residing at A/6, Suryoday C-op. Housing Society, L.B.S. Nagar, 90 Feet Road, Saki Naka, Mumbai 400 072. ... Petitioner

Vs.

1. Brihan Mumbai Mahanagarpalika, a Local Statutory Body Established under the Proviosn of the Mumbai Municipal Coirporation ACt, 1888, having its offices at Mahapalika Marg, Fort, Mumbai 400 001.

2. The Deputy Municipal Commissioner, of Brihanmumbai Mahanagarpalika, having his offices at Mahapalika Marg, Fort, Mumbai 400 001.

3. The Additional Municipal Commissioner (Western Suburbs), of Brihanmumbai Mahanagarpalika, having his offices at Mahapalika Marg, Fort, Mumbai 400 001.

4. The Chief Officer (Enquiry), of Brihanmumbai Mahanagarpalika, having his offices at Mahapalika Marg, Fort, Mumbai 400 001,.

5. The Education Officer, of Brihanmumbai Mahanagarpalika, having his offices at Mahapalika Marg, Fort, Mumbai 400 001.

6. Superintendent (Primary Education Department), of Brihanmumbai Mahanagarpalika, having his offices at Mahapalika Marg, Fort, Mumbai 400 001.

Mr. G.V. Murti for Petitioner.
Mrs. A.R. Joshi for Respondents.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 09, 2004

ORAL JUDGMENT :

1. The Petitioner by the present petition has impugned the order of the Respondents dated 13.8.2001 whereby the Education Officer has imposed on the petitioner herein punishment of withholding of annual increment for one year permanently. The Petitioner preferred an appeal against the said order. The Appellate Authority dismissed the appeal preferred by the Petitioner herein.

2. At the hearing of this petition, on behalf of the petitioner, it is pointed out that the enquiry conducted against the Petitioner was in respect of five charges which according to Respondents amounted to acts of misconduct. They read as under :

"i) Though the Municipal school teacher is not allowed to do the private tuition, he found conducting tuitions without prior permissions at Elahi Menon Trust Chawl, Kajuppada, Kurla from July, 1999 to November, 1999 and charged and recovered Rs.100/- as fees of the tuitions from the students per month.

ii) that he pressurised the student

namely Anil Chauhan and Satish Chauhan of Std. 6th (1) of Kajupada Hindi Municipal School No. 3 for giving a false statements, asking them to record the incorrect facts regarding beating of Ratnesh and conducting tuitions by Shri. Vijay Bahadur Singh when the statements of students were being recorded by A.O. (Schools), L/Ward in January, 2000.

iii) that he sent a message to the parent Smt. Vimal Chauhan and threatened her that if she does not pay him the balance of tuition fees which were then due to Shri. Vijay Bahadur Singh, he would not allow her wards to appear for annual examination held in April, 2000.

iv) that on 30.12.99 at about 11.00 a.m. he with the consent of Dy. Head Master Shri. Ram Akpal Singh, drove the complainant Shri. Vijaykumar Singh and his neighbours with force by holding their shoulders, when he had come to the school to deliver the regarding the death of Ratnesh and thus he misbehaved with

them and also talked to them in abusive language.

v) that he knowingly gave a false statement in the course of preliminary enquiry denying your visit to the residence of complainant's brother on 17.9.99 at 8 p.m."

. After considering the evidence, the Enquiry Officer found the petitioner not guilty of charges Nos. 1, 3, 4 and 5. The Enquiry Officer however, in so far as Charge No. 2 is concerned, found against the Petitioner herein.

3. It is submitted on behalf of the Petitioner by their learned counsel that the petitioner could not be punished if the misconduct which the petitioner was charged was not a misconduct as provided under the Act, Rules or Regulations by the Respondent No. 1. In this case, it is pointed out that what was applicable to the petitioner at the relevant time, were Municipal Servants Conduct and Discipline Rules. Perusal of the said rules would indicate that the only misconduct set out therein is in

terms of rule 38(iv) which reads as under :

> "The conduct of a Municipal School Teacher involving moral turpitude would amount to misconduct and will invite any of the punishments referred to in Rule 41, if in a departmental inquiry."

. The penalty it is pointed out is set out in Rule 41. The charge in respect of which the petitioner is found guilty, it is submitted, does not fall within rule 38(4) as the alleged misconduct which is found to be proved, assuming it to be proved, does not involve moral turpitude. In the alternative, it is submitted that the findings recorded by the Disciplinary Authority and upheld by the Appellate Authority based on the report of the Enquiry Officer are totally perverse and as such also the Disciplinary Authority and Appellate Authority could have imposed any punishment on the petitioner herein.

4. The law is now well settled that for the employer to charge an employee with misconduct, the misconduct must be set out either in the act, rules, regulation or standing orders. Unless the

misconduct alleged falls within one of these statutory enactments, the employer cannot charge the employee/workman of misconduct. Reference can be made to the Judgement of the Apex Court in the case of M/s. Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and others,

(1984) 1 Supreme Court Cases 1.

. In the instant case, as noted earlier, the only finding recorded by the Enquiry Officer against the petitioner herein is that the Petitioner pressurised the students to give false statement asking them to record incorrect facts regarding beating of one student Ratnesh and conducting tuitions by Shri. Vijay Bahadur Singh. Such allegation by itself can not bring the act within the ambit of the expression "moral turpitude" as now explained in the various judgements of the High Courts. It is not an offence against the society or an act which can be said to be amoral if one correctly understand the expression. The act of moral turpitude has not been defined under the provisions of the service rules. Once that be the case, the only ground based on which punishment was imposed against the petitioner, no longer subsists and consequently the order of punishment will have

to be set aside.

5. Even otherwise, in my opinion, the finding recorded is totally perverse. The student who had earlier recorded their statement, subsequently in the cross examination retracted their statement. Inspite of that the Enquiry Officer proceeded on certain assumptions which are not based on any material before the Enquiry Officer. Whether the statements earlier given by the students were under pressure and or whether the subsequent statements before Enquiry Officer in the cross examination could be said to be influenced by the presence of the teacher in the enquiry proceedings had to be answered. They have neither been decided nor answered. All that the enquiry Officer has done is to proceed on the basis that the statement of the students first recorded cannot be said to be wrong statement and that subsequent statements have to be rejected as they were inconsistent with first statement. On the contrary the evidence emerging in cross examination should have greater weight, if not explained in re-examination. This reasoning cannot be supported. Even in domestic enquiry rules of evidence do not apply. Yet there has to be fairness and nonarbitrariness even in recording

the findings. The learned Enquiry Officer cannot proceed on certain assumption not warranted either by the facts or material on record. The findings therefore, are perverse and consequently the punishment imposed also is liable to be set aside.

6. It may be mentioned that my attention was invited to the provisions of Services (Conduct) Rules, 1999 framed by Respondent No. 1. These rules in terms of Rule 1(2) are to come into force with effect from the date as notified by Municipal Commissioner in this behalf. They were so notified on 21.8.2000. In other words they will come into effect only after 21.8.2000. The charges against the petitioner herein were in respect of purported acts of misconduct of the year 1999. In these circumstances, Service Rules, 1999 would not be applicable.

7. In the light of that, rule made absolute in terms of Prayer Clause (a). C.C. expedited.

(F.I. REBELLO,J.)